Muniandy a/l Subramaniam & Ors v Majlis Perbandaran Langkawi Bandaraya Pelancongan & Anor

HIGH COURT (ALOR SETAR) — CIVIL PROCEEDINGS NO 21-08 OF 2003
ZAINAL ADZAM JC
25 JUNE 2003

Civil Procedure *— Injunction — Interlocutory injunction — Principles governing application of — Whether there were serious questions to be tried*

Land Law *— State land — Occupation of — Whether such occupation illegal — Consequences of such occupation — National Land Code ss 48, 341, 425*

Public Authorities *— Local authority — Whether a local authority a government department — Interpretation Acts 1948 and 1967 s 3 — Government Proceedings Act 1956 s 29 — Specific Relief Act 1950 s 54*

The plaintiffs — committee members of the Sri Muniswaran Temple ('the said temple') at Jalan Kisap, Kuah, Kedah applied for an interlocutory injunction against the two defendants (Majlis Perbandaran Langkawi and the State Government of Kedah respectively) to restrain them from demolishing the said temple. The issues for consideration were as follows: (a) whether a local authority is a department of the government; and (b) if a local authority is indeed a department of the government, whether an interim injunction could be issued against them under the Specific Relief Act 1950.

Held, dismissing the inter partes application for an interim injunction with costs:

(1) Based on the Government Proceedings Act 1956, the Interpretation Acts 1948 and 1967, a local authority is not a department of the government and is therefore not included within the ambit of s 54 of the Specific Relief Act 1950. Alternatively, if the local authority is in fact a department of the government, s 54(d) of the Specific Relief Act 1950 which applies to both final and interim injunctions would prohibit the court from granting the same (see p 184E–F).

(2) On the basis that the local authority is not a department of the government, what has to be considered is whether there is a serious question to be tried and to consider the question of balance of convenience (see p 184G).

(3) Based on the facts of the case, the temple had no legal interest or status on the land. In fact and in law, it was nothing more than a squatter allowed to be there by the second defendant until the land was actually needed by the Federal Government for its purposes. Its continued existence there is actually an offence

under s 425 of the National Land Code. There was therefore no serious question to be tried (see p 187D–E). A

[Bahasa Malaysia summary

Plaintif-plaintif — ahli-ahli Kuil Sri Muniswaran ('kuil tersebut') di Jalan Kisap, Kuah, Kedah telah memohon satu injunksi interlokutori terhadap dua defendan (Majlis Perbandaran Langkawi dan Kerajaan Negeri Kedah masing-masingnya) menyekat mereka daripada meruntuhkan kuil tersebut. Persoalan-persoalan untuk dipertimbangkan adalah seperti berikut: (a) sama ada satu pihak berkuasa tempatan adalah satu jabatan kerajaan; dan (b) jika satu pihak berkuasa tempatan adalah satu jabatan kerajaan, sama ada satu injunksi interim boleh dikeluarkan terhadap mereka di bawah Akta Relief Spesifik 1950. B C

Diputuskan, menolak permohonan inter partes untuk satu injunksi interim dengan kos: D

(1) Berdasarkan Akta Prosiding Kerajaan1956, Akta Tafsiran 1948 dan 1967, sebuah pihak berkuasa tempatan bukan satu jabatan kerajaan dan oleh itu tidak termasuk dalam lingkungan s 54 Akta Relief Spesifik 1950. Secara alternatifnya, jika pihak berkuasa tempatan sememangnya satu jabatan kerajaan, s 54(d) Akta Relief Spesifik 1950 yang terpakai ke atas kedua-dua injunksi muktamad dan interim akan menghalang mahkamah daripada memberikan yang sama (lihat ms 184E–F). E

(2) Pada asas bahawa pihak berkuasa tempatan bukan satu jabatan kerajaan, apa yang perlu dipertimbangkan adalah sama ada terdapat satu persoalan yang serius yang perlu dibicarakan dan untuk mempertimbangkan persoalan imbangan kemudahan (lihat ms 184G). F

(3) Berdasarkan fakta-fakta kes, kuil tersebut tiada kepentingan atau status sah atas tanah tersebut dan berdasarkan fakta dan undang-undang, ia tidak lebih daripada satu setinggan yang dibenarkan berada di situ oleh defendan kedua sehingga tanah tersebut diperlukan oleh Kerajaan Persekutuan untuk tujuannya. Kewujudannya yang berterusan adalah satu kesalahan di bawah s 425 Kanun Tanah Negara. Oleh itu tidak terdapat persoalan serius untuk dibicarakan (lihat ms 187D–E).] G H

Notes

For cases on interlocutory injunctions, see 2(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 2707-2794.

For cases on local authorities generally, see 10 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1564–1565. I

For cases on state land generally, see 8 *Mallal's Digest* (4th Ed, 2001 Reissue) para 3868.

Cases referred to

American Cyanamid v Ethicon Ltd [1975] AC 396 (refd)
Chellapa a/l K Kalimuthu (suing as public officer of Sri Maha Mariamman Temple, Hicom, Shah Alam, Selangor) v Sime UEP Properties Bhd [1998] 1 MLJ 20 (distd)
Ganad Media Sdn Bhd v Dato' Bandar Kuala Lumpur (No 2) [2002] 1 MLJ 508 (not folld)
Government of Malaysia v Lim Kit Siang [1988] 2 MLJ 12 (folld)
Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors [1995] 1 MLJ 193 (refd)
Punca Klasik Sdn Bhd v Abdul Aziz bin Abdul Hamid & Ors [1994] 1 MLJ 136 (refd)
RIH Services (M) Sdn Bhd v Tanjung Tuan Hotel Sdn Bhd [2002] 3 MLJ 1 (refd)
Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak & Ors [1982] 1 MLJ 313 (folld)
Smith v Inner London Education Authority [1978] 1 All ER 411 (refd)
Tan Suan Choo v Majlis Perbandaran Pulau Pinang [1983] 1 MLJ 323 (not folld)
Tan Weng Chiang v PP [1992] 2 MLJ 625 (refd)
Tay Long Kee Impex Pte Ltd v Tan Beng Huwah [2000] SLR 750 (refd)
Tein Ik Sdn Bhd & Ors v Kuok Khoon Hwong Peter [1992] 2 MLJ 689 (folld)
Tropiland Sdn Bhd v PP [1993] 2 MLJ 261 (refd)
Yap Ea Teck v Yang Di Pertua Majlis Daerah, Kota Tinggi, Johor [1995] MLJU 55 (not folld)

Legislation referred to

Federal Constitution art 11
Federal Roads Act 1959
Government Proceedings Act 1956 s 29(1)(a)
Interpretation Acts 1948 and 1967 s 3
Land Acquisition Act 1960
Local Government Act 1976 ss 2, 3, 8, 9, 102, 107(4)
National Land Code ss 62(2)(a), 425(i)
Public Authorities Act 1948
Rules of the High Court 1980 O 1 r 2(2), (3)
Specific Relief Act 1950 s 54(d)
Street Drainage and Building Act 1974 ss 3, 70, 72(1)(a), (6)
Town and Country Planning Act 1974

C Megalai (*Meg Nacha & Co*) for the plaintiff.
Aidah Ghani (*Ali Munawar* with her) (*Aidah Ghani & Assoc*) for the first defendant.
Ahmad Zakhi bin Mohd Daud (Senior Federal Counsel).

Zainal Adzam JC: The plaintiffs by a summon in chambers applied for an interlocutory injunction against the two defendants to restrain them from

demolishing the Sri Muniswaran temple at Jalan Kisap, Kuah, Kedah. They are the committee members of the said temple. The first defendant is the Majlis Perbandaran Langkawi and the second defendant is the State Government of Kedah. The application was ex parte accompanied with a certificate of urgency and an affidavit in support. After a brief hearing, the interlocutory injunction was granted against the first defendant but not against the second defendant as the facts in their affidavit disclosed that only the first defendant was actively involved in the impending demolition exercise. The matter was then adjourned to enable the plaintiffs to serve the two defendants the necessary documents for an inter partes hearing. That hearing was then conducted on two dates and hence this decision.

The facts of this matter before me are briefly as follows. The plaintiffs claimed that the temple has been in existence at the location since 1928. It was built and used by plantation workers on a rubber plantation owned by a British company with the consent of the owners. The estate was subsequently bought by Boon Siew Sdn Bhd and that company also consented to the existence of the temple. According to the plaintiffs, a small road originally existed beside the temple and in 1986 it was replaced with two lane tar road. The temple was used for religious ceremonies including firewalking ceremonies and until 2002 the police even issued permits for them to conduct religious processions. The plaintiffs averred that there was no new temple built at the site but admitted that repairs and renovations were done to the original temple.

In their supplementary affidavit, the plaintiffs admitted that the first defendant did acquire the land near the temple from Boon Siew Sdn Bhd and in 1986 built the two lane tar road. At all times, the main shrine was at the same location but that location was subsequently declared a road reserve. They, however, admitted that the tar road that was built near the temple was not done on purpose, although there was ample area on the other side, but was something that had happened. On 26 February 2003, the plaintiffs were served with a notice dated 16 February 2003 under s 72 of the Street Drainage and Building Act 1974 ('the Act') by the first defendant to demolish the said temple. The first defendant called the plaintiffs for discussion and negotiation on two occasions but nothing was resolved.

The first defendant in its affidavit in reply admitted that the temple had existed for a long time but it was restored from an old building to a new building without acquiring the prior approval from them and without submitting the necessary plans. That failure of the plaintiffs was in contravention of s 70 of the Act which is an offence under s 72 of the same Act. Its affidavit also exhibited an investigation report which revealed an ongoing construction done on the site involving the restoration of the old temple into a new building and the addition of other new structures. The construction was without any written approval of the first defendant and the reconstructed temple encroached into the road reserve with a set back of only 26ft from the middle of the road. The minimum set back from the middle of the road allowed was 90ft. The four photographs exhibited showed the ongoing construction work and the location of the temple. The

A other exhibits included copies of the notice issued, the plans of the road reserve and the sketch plan of the temple site showing the encroachment of the road reserve.

The first defendant filed a supplementary affidavit which revealed that the land on which the temple is situated (ie Land Title GRN 36370, Lot B No 1311) was originally owned by Boon Siew Sdn Bhd, Pulau Pinang. The said land was acquired by the State Government on 24 November 1985 vide Government Gazette No 478/85. A highway was subsequently constructed on the acquired land. On 13 May 1998, the Kedah State Executive Council approved a proposal for ten roads in Langkawi, which included the road beside the temple, to be gazetted as federal roads. The C necessary order was then made by the Minister under the Federal Roads Act 1959 and gazetted as PU(A)344/1999.

From the affidavits filed on behalf of the two parties, there are some undisputed facts. Firstly, the land on which the temple is situated is state land and the plaintiffs' temple has no proprietary or registrable interest in that land. Secondly, the encroachment on the road reserve as shown by the D first defendant's various reports and sketch plans was admitted by the plaintiffs. The plaintiffs however disputed the allegation that a new temple was reconstructed in place of the old temple and averred that they only carried out renovation and repairs on the original temple.

Before I proceed further, there is one matter raised by the first E defendant's counsel that need to be addressed. It was submitted on behalf of the first defendant, on the authority of the High Court case of *Ganad Media Sdn Bhd v Dato' Bandar Kuala Lumpur (No 2)* [2002] 1 MLJ 508, that no injunction can be issued against a local authority under the Specific Relief Act 1950 as they are, in law, a department of the government of Malaysia. However, the same counsel on the second hearing date appeared F unsure whether to maintain or withdraw that submission. This was, according to him, after studying the Court of Appeal case of *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193. This matter raises two interesting questions related to this application before me which need to be clarified. Firstly, whether a local authority is a department of the government. Secondly, if a local authority is indeed a department of G the government, can an interim injunction be issued against it under the Specific Relief Act 1950.

Abdul Malik Ishak J in *Ganad Media* citing with approval the case of *Yap Ea Teck v Yang Di Pertua Majlis Daerah, Kota Tinggi, Johor* [1995] MLJU 55 ruled that a local authority is in law, a department of the H government of Malaysia. Both these cases came to the conclusion that local authorities are not free from government control and are subservient to the Minister responsible for local government after considering various provisions in the Local Government Act 1976 (ss 2, 8, 9, 102 and 107(4)).

With due respect to the two learned judges in that two cases, I beg to I differ. My reason is this. The words 'Government' and 'State Government' in s 3 of Interpretation Acts 1948 and 1967 are defined respectively as:

'Government' means The Government of Malaysia;

'State Government' means the Government of a State.

If Parliament intended s 54(d) of the Specific Relief Act 1950 to include local authorities it would have done so. In interpretation of statutes, especially on the jurisdiction of the court, the Supreme Court in the case of *Tan Weng Chiang v Public Prosecutor* [1992] 2 MLJ 625, at p 630 stated:

> ... Where the meaning of words in the statute is plain and unambiguous, judges should not invent fancy ambiguities ... clear and unambiguous words must exist in such modification or exclusion of the existing powers and jurisdiction of the Court ... The same principle was adopted by the Federal Court in *Affin Credit (Malaysia) Sdn Bhd v Yap Yuen Fui* [1984] 1 MLJ 169 ...

In the case of *Punca Klasik Sdn Bhd v Abdul Aziz bin Abdul Hamid & Ors* [1994] 1 MLJ 136 at p 143 James Foong J stated as follows:

> ... This court does not have such powers to alter, vary or add on to any law as laid down by statute ... The function of this court is not to rewrite statute and give it another meaning when there is a clear and unequivocal provision in the enactment. However harsh the result may be, the court of law has to follow what is enacted by Parliament.

The Government Proceedings Act 1956 which governs all proceedings by and against the Federal Government and the Governments of the States defines 'Government' similarly as the Interpretation Acts 1948 and 1967. The element of government control and supervision are not mentioned in these two legislations as a requirement for any agency to be a government department. Also, the provisions relied by the two cases are common provisions found in other legislations establishing other state and federal statutory bodies. Accepting the two courts' ruling would effectively make the Government Proceedings Act 1956 and s 54(d) of the Specific Relief Act 1950 applicable to all these statutory bodies. On the contrary, all these statutory bodies are however governed, in matters relating to court proceedings by, inter alia, the Public Authorities Act 1948.

However, I note that the learned judge was quite tentative with his ruling when he said that:

> ... In the event I am wrong in the approach adopted by me, I must proceed further to show that an injunction ought not to be granted against the defendant ...

Similarly, in the event I am wrong in my approach, I will proceed on the second issue.

On the second issue, Gopal Sri Ram JCA in the case of *Keet Gerald Francis Noel John v Noor bin Abdullah* approved Edgar Joseph Jr J's decision in *Tan Suan Choo v Majlis Perbandaran Pulau Pinang* [1983] 1 MLJ 323 which held that only perpetual or final injunctions are applicable to s 54 of the Specific Relief Act 1950 and not interim injunctions. His Lordship ruled that 'the statutory bar encapsulated in s 54(d) of the Act is confined to perpetual or final injunctions and has no application to temporary injunctions which are governed by s 51 of the Act ...'

The relevant passage in the judgment of Edgar Joseph Jr J (as his Lordship was then) is as follows (at p 324):

> In the first place, in my view, s 54 of the Specific Act, 1950 applies only to applications for perpetual injunctions. It has no relevance to applications for a temporary injunction as in the instant case. This is clear from a reading of Chapters IX and X of the Act which are entitled 'of injunctions generally' and 'of perpetual injunctions' respectively. Section 54(d) relied on by Mr Chandran falls under Chapter X which deals exclusively with perpetual injunctions. Next, s 51(1) which falls under Chapter IX states categorically that 'temporary injunctions may be granted for any period of a suit and are regulated by the law relating to civil procedure.' This, in my view, makes the Rules of the High Court 1980, applicable and there is nothing therein which constitutes a bar to the granting of an interim injunction against a municipality.

That ruling, with due respect to his Lordship, seems to be in direct conflict to s 29(1)(a) of the Government Proceedings Act 1956. That section provides as follows:

> (1) In any civil proceedings by or against the Government the court shall, subject to this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require;
>
> Provided that —
>
> (a) where in any proceedings against the Government any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, *the court shall not grant an injunction* or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and
>
> (b) ...
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> (2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Government if the effect of granting the injunction or making the order would be to give any relief against the Government which could not have been obtained in proceedings against the Government. (Emphasis added.)

This provision specifically prohibits the court from granting an injunction. It states 'injunction' and does not qualify that word with all the various types of injunctions available. The plain and simple reading of that word 'injunction' would obviously mean to include all types of injunctions. Here then is a provision that clearly prohibits the granting of an injunction against the government, not unlike the provisions of s 54(d) of the Specific Relief Act 1950. Since the Specific Relief Act 1950 provides for various different types of injunction one would think that the term 'injunction' in s 54(d) being a general term would encompass all types of injunction mentioned in the same Act. That interpretation would be in line with the plain and clear word 'injunction' used in s 29(1) (a) of the Government Proceedings Act 1956. Salleh Abas LP in the case of *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 in his judgment at p 19 on the same matter said:

> ... the issue of the interim injunction against UEM is absolutely contrary to the expressed words of section 29 of the Government Proceedings Ordinance

1956, as it has in effect indirectly restrained the Government. Section 29 is as follows: ... (his Lordship then quoted section 29(1)(a) and (2.)) ...

> This means that no injunction could be directly or indirectly issued against the Government or its officers. Similarly, the court has no jurisdiction to grant an injunction against a private litigant if the injunction would have the effect of restraining the Government or its officers from performing their functions. This has been the interpretation which has been placed by the courts in England as well as in this country.

The other ground of Edgar Joseph Jr J was that the Rules of the High Court 1980 contains nothing which constitute a bar to the granting of an interim injunction against a municipality (and obviously against the government). The Rules of the High Court 1980 is a general procedural law applicable to all proceedings before the court. The Government Proceedings Act 1956 is a specific law governing all proceedings by and against the government. In case of a conflict I am, respectfully, of the view that the latter should prevail. I am fortified on this by O 1 r 2(2) of the Rules of the High Court 1980 which provides that the rules shall not have effect in relation to proceedings in respect of which rules have been or may be made under any written law for the specific purpose of such proceedings. Rule 2(3) of the same order is also of the same effect.

Between the two decisions, ie by the Court of Appeal and that of the Supreme Court, I am of the opinion that I am bound by the decision of the Supreme Court although the matters raised by me are not considered in the Supreme Court's decision. However, in view of my ruling on the first issue that the local authority is not a government department, the Court of Appeal ruling would have no consequence and furthermore, the present matter is an application for an interim injunction.

I now return back to the present case. The law on the granting of an interim injunction is well established. Incidentally, the term 'interim injunction' and 'interlocutory injunction' are synonymous without any material difference between the two (Singapore Court of Appeal case of *Tay Long Kee Impex Pte Ltd v Tan Beng Huwah* [2000] SLR 750 at p 764). The judgment of Jemuri Serjan CJ in the Supreme Court case of *Tein Ik Sdn Bhd & Ors v Kuok Khoon Hwong Peter* [1992] 2 MLJ 689 at p 700 states as follows:

> What is relevant and required at that stage is for the learned judge to decide on the affidavits available before him that the claim in the originating summons is not frivolous or vexatious; in other words, that here is a serious question to be tried and having so decided he must go on to consider the question of balance of convenience ...
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> ... So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

The other governing principles for the granting of an interim injunction are found in the words of Lord Diplock in *American Cyanamid v Ethicon Ltd* [1975] AC 396 as follows (at p 408):

> ... The governing principle is that court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage ... .
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> ... It is where there is a doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises. It would be unwise to attempt even to list all the various matters which may need to be taken into consideration in deciding where the balance lies, let alone to suggest the relative weight to be attached to them. These will vary from case to case.

Lord Denning MR in *Smith v Inner London Education Authority* [1978] 1 All ER 411 at p 418 while discussing *American Cyanamid Co v Ethicon Ltd* said this:

> ... I am of opinion that a local authority should not be restrained, even by an interlocutory injunction, from exercising its statutory powers or doing its duty towards the public at large, unless the plaintiff shows that he has a 'real prospect of succeeding in his claim for a permanent injunction at the trial.

On the question of a serious question to be tried the plaintiffs' counsel submitted that the first defendant's notice under s 72 of the Street, Drainage and Building Act 1974 was faulty because the work at the temple were renovations to the existing temple. The decision in the case of *Tropiland Sdn Bhd v Public Prosecutor* [1993] 2 MLJ 261 was relied on. In that case the High Court, on appeal altered the convictions under s 70(1) to that under s 79(1) of the Act. That was because the two erections complained of in that case were done inside an existing building and therefore outside the purview of s 70(1). The offences according to the court should properly be under s 79(1) of the Act. In the present case the construction works were on and outside the building and not done inside an existing building. This can be clearly seen from the photographs exhibited by both parties in their various affidavits. The sketch plans exhibited by the first defendant also clearly showed that apart from work on the temple proper, the construction also involved building in open air new structures like pillars and roofs attached to the temple. These are not disputed by the plaintiffs In their affidavits. That case therefore is not applicable to the facts of the present case.

It was further argued on behalf of the plaintiffs that the construction work involves renovation work to the existing building and as such the offence should by virtue of sub-s 16(b)(ii) of s 70, be exempted from the requirement of sub-s (2) of s 70, ie from the submission of any plan to the first defendant. I am afraid that provision cannot assist the plaintiffs as the Act provides a very wide definition of 'building'. Section 3 provides:

> 'building' includes any house, hut, shed or roofed enclosure, whether used for the purpose of a human habitation or otherwise, and also any wall, fence,

> platform, staging, gate, post, pillar, paling, frame, hoarding, slip, dock, wharf, pier, jetty, landing-stage or bridge, or any structure support or foundation connected to the foregoing;

That definition carries three limbs and it covers the whole spectrum of construction works which fall within any of the three limbs. That being so, the construction works as carried out at the temple clearly could fall under sub-s 16(a) of s 70, as 'work on the site thereof for or in respect of a new buildings would easily be work relating to the construction of 'any new structure' connected to an existing 'house, hut, shed or roofed enclosure' (ie the temple). As stated earlier, the photographs exhibited clearly showed ongoing construction not only to the temple but other new structures like pillars and roofs attached to the temple. As sub-s 16(a) is not covered by the proviso of the same subsection, the plaintiffs are therefore required to submit the necessary plans to the first defendant for the necessary approval.

On the submission of the failure of the first defendant to give any notice prior to the demolition notice, the provision of s 72(1)(a) allows the first respondent to issue that notice to the plaintiffs to demolish the building erected in contravention of s 70 'within such time as the local authority may specify'. In fact that section also enable the first defendant to issue such a notice to any building erected prior to the coming into force of the Act and in contravention of any law then in force to buildings. Under those circumstances, the burden would be on the plaintiffs to show that the temple had obtained the necessary approval as a building. Subsection (6) of s 72 relied on the plaintiffs on the other hand applies only to notice of at least 30 days where the building is to be demolished by the local authority themselves.

As such I find that the notice issued by the first defendant was, on all the available facts before me, proper and in accordance with the relevant provisions of the Act. On the question of advance notice to demolish as submitted by the plaintiff's counsel, apart from the aforesaid, it is noteworthy that from the time the plaintiffs were served the notice on 26 February 2003 until this application there was a lapse of more than three months and no demolition happened. This was despite the fact the notice required the plaintiffs to demolish the temple immediately. Apart from that, the plaintiffs from their own affidavits seemed to be fully aware of the need for the proper plans to be submitted to the first defendant. This can be seen in para 34 of their statement of claim and *The Star* newspaper report dated 5 June 2003 exhibited with the plaintiffs' supplementary affidavit dated 8 June 2003. That report reads:

> Division chairman T Manogharan said the 80-year old temple was one of the oldest Hindu temples on the island. 'We understand that the temple was renovated without approval from the local authority but we hope the state government would reconsider its decision,' Manogharan said ...
>
> Earlier at 8.30am, the Langkawi Municipal council and district office had moved heavy machinery into the area following countless reminders to the temple committee to relocate because it had encroached onto a public road ...

A

> According to Manogharan, the temple community apologized for not having the foresight to notify the local authorities of their need to extend the temple, saying they were ignorant of the process ...

The plaintiffs relied strongly on the fact that the temple was in existence since 1928, ie well before the acquisition by the State Government of the
B land on which it was build and the subsequent reservation as a federal road. The temple existence obviously was based on the goodwill and permission of the two previous landowners, the British plantation and subsequently Boon Siew Sdn Bhd. Throughout its existence it has never acquired any legal, registrable or proprietary interest on the land on which it was situated. Nothing was averred by the plaintiffs to that effect.

C

When the land in question was acquired by the State Government in 1985 from Boon Siew Sdn Bhd, its status reverts back as 'state land' within the meaning and effect of the National Land Code. Furthermore, that land was gazetted as a federal road reserve by virtue of the State Government's decision and the Minister's order respectively. These facts are not disputed
D at all by the plaintiffs but are actually admitted directly and indirectly by them in various parts of their affidavits. The temple therefore has no legal interest or status on the land, and in fact and in law it is nothing more than a squatter allowed to be there by the second defendant until the land is actually needed by the Federal Government for its purposes. Its continued existence there is actually an offence under s 425(1) of the National Land
E Code. The temple's long existence on the land per se cannot defeat or override the State Government's title over it.

The position of the temple in law is not unlike the appellants in the Federal Court case of *Sidek bin Haji Muhamad & 461 Ors v The Government of the State of Perak & Ors* [1982] 1 MLJ 313. In that case Raja Azlan Shah
F CJ (as His Highness was then) at p 314 said this:

> ... In our opinion there is one issue which lies at the heart of this case. It is whether the appellants have a cause of action against the respondents. The answer is obvious. It is clear beyond doubt that they cannot succeed because they are squatters. Squatters have no right either in law or in equity. (See *McPhail v Persons Unknown CA*). It does not lie in their mouths to assert that
G they used and occupied the land as squatters.
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> Their position under the National Land Code is not dissimilar. Section 48 of the Code is against them. It says that 'No title to State land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever.' Section 78 of the Code is also relevant. It says that
H alienation of State land shall only be effected in accordance with the provisions of Chapter 3, of Part Five and Chapter 2 ... . Section 341 of the Code empowers the State Authority to dispossess any squatters at any time. So the limitation period does operate against the State. What equitable right or interest can be conjured up for the squatters who have illegally occupied State land? Squatters go into possession by, or as a result of, illegal occupation of State land. Illegal occupation of State land is an offence under s 425 of the
I National Land Code. It is well established that a court of equity will never assist squatters to resist an order of possession illegally acquired; it will never intervene in aid of wrong-doers. (See *Grafton v Griffin*) ...

The Court of Appeal case of *Chellapa a/l K Kalimuthu (suing as public officer of Sri Maha Mariamman Temple, Hicom, Shah Alam, Selangor) v Sime UEP Properties Bhd* [1998] 1 MLJ 20 was also relied by the plaintiffs. The circumstances in that case is however different from the present case. There the court found that there was a serious question to be tried as to whether the plaintiff, suing on behalf of a temple, had a legitimate interest and expectation which the court should protect. The respondent, a developer, on whose land the temple is situated was fully aware that when they applied for conversion, the State Authority had imposed a special condition protecting the status and situation of the temple. In the present case there was conversely, a State Authority decision to first acquire the land without any such special condition in relation to the temple, and consequently to reserve it as a federal road. That case therefore is of no assistance to the plaintiffs.

The only thing left now for me is to peruse the prayers pleaded by the plaintiffs in their statement of claim to determine whether they raise any serious question to be tried or whether they have a real prospect of succeeding in their claim for a permanent injunction, or for any other remedy for that matter at the trial. Their prayers can be reproduced as follows:

(a) satu deklarasi bahawa Kuil Sri Muniswaran, Kuah, Langkawi berhak untuk wujud atas tapaknya terkini (a declaration that the temple known as Sri Muniswaran, Kuah, Langkawi be allowed to remain in its present site).

(b) satu deklarasi bahawa tindakan Defendan Pertama untuk meroboh Kuil Sri Muniswaran, Kuah, Langkawi adalah tidak sah.

(c) satu injunksi melarang pihak Defendan Pertama meroboh Kuil Sri Muniswaran, Kuah, Langkawi.

DAN/ATAU SECARA ALTERNATIF

(d) bahawa Defendan Pertama mengubahkan jalan yang berhampiran Kuil Sri Muniswaran supaya Kuil tersebut diletak di luar tanah rezab jalan.

(e) bahawa Defendan Pertama mengistiyarkan (gazette) tapak Kuil tersebut di semua pelan perancangan pembangunan Langkawi.

(f) bahawa Defendan Kedua, memperolehi tanah yang diperlukan untuk mengubah jalan.

A close study of all the prayers of the plaintiffs would, to my mind, in the circumstances of this case, show that they are all misconceived in law. They are basically orders sought by the plaintiffs to be made by the court which are beyond the jurisdiction of the court. With regards to prayer (a), as found earlier, the plaintiffs would have no legal basis to be entitled to that prayer. It is established law that title to state land can only be acquired by the process of alienation effected in accordance with the provisions of the National Land Code. Since the plaintiffs are in illegal occupation of a state land gazetted as a road reserve, the State Authority has the right to do whatever necessary under the National Land Code and it is not for the courts without any valid basis to order the State Authority to confer any interest on the land to anyone.

Prayer (b) cannot, for the reasons earlier stated, be granted to the plaintiff. Prayer (c) is a similar prayer as seeked in this application and its prospect of succeeding, in my opinion, of course depends on the decision of this court. Prayer (d) involves the exercise of the State Authority's power and discretion under s 62 of the National Land Code. Again, it is not for the courts to direct the Executive on how to exercise their powers and discretion conferred upon them by Parliament. The position is the same with prayers (e) and (f) which involve the power of the State Authority under the Town and Country Planning Act 1974 and Land Acquisition Act 1960 respectively.

The inevitable conclusion from all these is that the plaintiffs has failed to show that they have any legal or proprietary interest that needed to be protected by way of an interim injunction. I find that the affidavits of the plaintiffs and their statement of claim disclose no serious question to be tried. Their statement of claim and all the prayers, for the reasons given, accordingly has no real prospect of succeeding at the trial. On principle, as stated earlier, since I find that there is no serious question to be tried, there is no need for me to further consider the other requirements like adequacy of compensation by an award of damages and the question of balance of convenience. However since this application obviously involves a very sensitive matter ie a house of worship, I will briefly touch on the other requirements to show that this court strained to consider all matters that could be considered.

On the issue of adequacy of an award of damages, the counsel for the plaintiffs submitted that the temple is irreplaceable and that if the interim injunction is not allowed the subject matter will perish. I find from the plaintiffs own affidavit that it is not so. From the two newspaper reports exhibited the plaintiffs are willing to accept an alternative site for the temple if granted. *The Star* newspaper report dated 5 June 2003 reads:

> ... The temple committee would speak to Mentri Besar Datuk Seri Syed Razak Syed Zain to provide a site for the temple relocation ...
>
> Syed Razak said the state was willing to talk with the temple committee if they wanted land for a new temple.
>
> However, he said, they would have to apply for the new land.

In the Berita Harian newspaper report dated 5 June 2003, the second plaintiff was quoted as follows:

> Kami rela menarik balik perintah injuksi itu dan mengalihkan kuil berkenaan sendiri jika ada hitam putih mengenai pemberian tanah sama ada dipindahkan ke kawasan baru atau kuil ini dianjakkan ke dalam dari tapak asal.

What is obvious is that it is not a serious problem to the plaintiffs to set up the temple elsewhere. So should the plaintiffs be successful in the trial, which I seriously doubt, they could be compensated by another site being granted for the temple and that seems to be a perfectly acceptable and adequate remedy to the plaintiffs.

From the dated photographs exhibited by both the plaintiffs' and the first defendant's affidavits one thing is clear. The construction work at the

temple was ongoing at least between 3 February 2003 to 5 June 2003, that is, before the date the notice was issued by the first defendant (ie 16 February 2003 also the date of the investigation by the first defendant's officer) until well after the date the notice was served on the plaintiffs (ie 26 February 2003). This was because from the photographs dated 3 February 2003, apart from other structures, the temple exterior was not painted. On the photographs dated 5 June 2003 the roof and walls of the temple was by then fully decorated and painted with various colours. In other words, the construction work at the temple went on unabated and oblivious to the notice served upon them three and a half months earlier, to demolish the temple. That certainly is not a conduct of people about to suffer an impending irreplaceable loss.

On the issue of balance of convenience, it goes without saying that, in the circumstances of this case, the balance weighs heavily on the side of the first defendant. In the case of *Tenaga Nasional Bhd v Dolomite Industrial Park* [2000] 2 MLJ 133 at p 138, Gopal Sri Ram JCA stated as follows:

> That brings us to the question of remedy. The evidence on record shows that the offending pylon forms part of the national grid for the conveyance of electricity. It is therefore clear that if a mandatory injunction is maintained there will be disruption of electricity supply in Peninsular Malaysia. It is not in the public interest that such a disruption should occur ... .
>
> In *Smith v Inner London Education Authority* [1978] 1 All ER 411, Browne LJ held that public interest was always a relevant consideration in granting specific relief. This is how he put it (at p 422g–h of the report):
>
> > '... I think counsel for the authority is right in saying that where the defendant is a public authority performing duties to the public one must look at the balance of convenience more widely, and take into account the interests of the public in general to whom these duties are owed.'
>
> No doubt that was said in the context of an interlocutory injunction. But we do not regard the principle to be any different in the case of a final injunction, whether prohibitory or mandatory in nature.
>
> The learned judge in this case failed to take into account public interest. If the learned judge had done so he would have held that the public interest outweighs the respondent's interest.

As in that case, I find that in the present case is a situation where public interest should outweigh the plaintiffs' interest. The first defendant is a local authority established by the second defendant in consultation with the Minister under s 3 of the Local Government Act 1976 and is also conferred with responsibilities and powers by the Street, Drainage and Building Act 1974. The authority for reservation of the land as federal road reserve by the State Government is provided in s 62(2)(a) of the National Land Code. I am duty bound to consider the wider interest of the public since the first defendant in their enforcement activities was merely exercising their duties, responsibilities and powers conferred upon them by Parliament. I cannot find anything to suggest that the first defendant acted illegally or ultra vires their powers in this matter.

A After the service of the notice on the plaintiffs, the first defendant have acted with much restrain, meeting the plaintiffs twice and apparently, deciding to take action only after a lapse of more than three months of non-compliance of the notice by the plaintiffs. The first defendant explained in its affidavit that its accommodated the temple all along as the road was then not required to be widened. Apart from the encroachment, the danger B posed to road users by the temple, being a solid concrete building just adjacent to a primary road (as in the gazetted local development plan exhibited in the first defendant's affidavit), is obvious.

Finally, in her concluding remarks, counsel for the plaintiffs submitted that the two defendants should respect the fundamental right of the C plaintiffs to practice their religion and to own and run their temple under art 11 of the Federal Constitution. On this matter, let me make it absolutely clear that this case has nothing to do with infringement of the plaintiffs' rights as enshrined in art 11. That right as provided in cl (3)(a)(b) and (c) of that article is subject to the condition that they must conduct themselves 'in accordance with law'. There are countless houses of worship in this D country existing peacefully without any unnecessary interference. That is because they conducted themselves within the law. The plaintiffs, like everyone else, are duty bound to obey and respect the law.

This application was heard on 4 June 2003 as an ex parte application whereupon the ex parte interim injunction was granted. Coincidentally, E that ex parte interim injunction order lapses today after twenty-one days. However, upon service on the first defendant, this matter, is, by law, converted, to an inter partes application (see the Court of Appeal case of *RIH Services (M) Sdn Bhd v Tanjung Tuan Hotel Sdn Bhd* [2002] 3 MLJ 1). Therefore, based on all the aforesaid reasons that I have given, I dismiss this inter partes application for an interim injunction with costs.

F *Inter partes application for an interim injunction dismissed with costs.*

Reported by Mariette Peters-Goh

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